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**The Honorable James L. Robart**

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY



**11-CV-00222-SUP**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

## AT SEATTLE

MICROSOFT CORPORATION.

Plaintiff,

V.

JOHN DOES 1-11 CONTROLLING A COMPUTER BOTNET THEREBY INJURING MICROSOFT AND ITS CUSTOMERS.

### Defendants.

Case No. 2:11-cv-00222

**MICROSOFT SUPPLEMENTAL  
BRIEF IN SUPPORT OF  
APPLICATION FOR AN  
EMERGENCY TEMPORARY  
RESTRAINING ORDER, SEIZURE  
ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY  
INJUNCTION**

\*\*FILED UNDER SEAL\*\*

## I. INTRODUCTION

Microsoft submits this supplemental brief in support of its request for injunctive relief regarding the operation of the “Rustock” botnet. Attached hereto as Exhibit A is Microsoft’s Second Amended Proposed TRO, Seizure Order and Order to Show Cause Regarding a Preliminary Injunction (the “Proposed Order”), which was drafted pursuant to the Court’s observations and direction at the February 28, 2011 hearing. The Proposed Order has been narrowed and amended to more clearly direct the requested relief at Defendants, their acts and property – which are squarely the focus of the Proposed Order.

At the hearing, the Court requested authority that would support the Court's directing third-parties to perform acts necessary to avoid frustration of the requested relief. Under the

**All Writs Act, a Court's authority to enforce any of its orders extends to third-parties who are  
SUPPLEMENTAL BRIEF ISO APPLICATION FOR EX  
PARTE TRO, EX PARTE SEIZURE ORDER AND  
ORDER TO SHOW CAUSE RE PRELIMINARY  
INJUNCTION**

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1 in a position to frustrate its implementation. Narrowly tailored direction to third-parties  
 2 necessary to the implementation of equitable relief is authorized and appropriate under the  
 3 All Writs Act. Microsoft has significantly narrowed those aspects of the Proposed Order that  
 4 require third-party assistance in implementing the Proposed Order. The remaining narrowed  
 5 directions to third-parties are necessary to implement the injunctive relief sought, and the  
 6 Court has the authority under the All Writs Act to require the minimal third-party assistance  
 7 and cooperation outlined in the Proposed Order. Accordingly, for the reasons set forth in its  
 8 application for TRO and on the bases set forth below, Microsoft respectfully requests that the  
 9 Court enter the Proposed Order.

10 **II. ARGUMENT**

11 The All Writs Act provides that:

12 The Supreme Court and all courts established by Act of Congress may issue all  
 13 writs necessary or appropriate in aid of their respective jurisdictions and  
 agreeable to the usages and principles of law.

14 28 U.S.C. § 1651(a). The Supreme Court has recognized that narrow direction to third-  
 15 parties that is necessary to effect the implementation of a court order is authorized by the All  
 16 Writs Act:

17 The power conferred by the Act extends, under appropriate circumstances, to  
 18 persons who, though not parties to the original action or engaged in  
 wrongdoing, are in a position to frustrate the implementation of a court order or  
 19 the proper administration of justice, and encompasses even those who have not  
 taken any affirmative action to hinder justice.

20 *United States v. New York Telephone Co.*, 434 U.S. 159, 174 (1977) (citations omitted)  
 21 (order to telephone company to assist in implementation of a pen register warrant was  
 22 authorized under the All Writs Act); *See also In re Application of United States for an*  
*Order Authorizing An In-Progress Trace of Wire* 616 F.2d 1122, 1129 (9th Cir. 1980) (same;  
 24 noting of *New York Telephone*, “the Court made the commonsense observation that, without  
 25 the participation of the telephone company, ‘there is no conceivable way in which the  
 26 surveillance authorized could have been successfully accomplished.’”); *In re Baldwin-United*  
*Corp.*, 770 F.2d 328, 338-339 (2d Cir. 1985) (“An important feature of the All-Writs Act is  
 28 its grant of authority to enjoin and bind non-parties to an action when needed to preserve the

court's ability to reach or enforce its decision in a case over which it has proper jurisdiction"; "We do not believe that Rule 65 was intended to impose such a limit on the court's authority provided by the All-Writs Act to protect its ability to render a binding judgment."); *United States v. Hall*, 472 F.2d 261, 265 (5th Cir. 1972) (upholding a contempt citation based on an injunction enjoining a non-party in a school desegregation case from causing disruption on the school campus because the "integrity of the court's power to render a binding judgment in a case over which it has jurisdiction [was] at stake"); *Dell Inc. v. BelgiumDomains, LLC*, 2007 U.S. Dist. LEXIS 98676 (S.D. Fla. Nov. 20, 2007) (All Writs Act applied in conjunction with trademark seizure under Rule 65 and Lanham Act).

Accordingly, narrowly tailored directions in the Proposed Order that are necessary to prevent third-parties from frustrating or thwarting implementation of the Court's Order are appropriate. Here, the third-party data centers and domain registries control the infrastructure hosting Defendants' malicious IP addresses and domains, and are in a position to potentially frustrate the implementation of the order. *See* Campana Decl. ¶¶ 16, 23, 24. Without their reasonable assistance, there is no way in which the relief, directed at Defendants' acts and property, can be successfully effected. *See id.* ¶¶ 42-48.

The Proposed Order seeks the reasonable assistance of the third-party data centers and domain registries in disabling Defendants' IP addresses and domains so that Defendants can no longer use them to control the Rustock botnet. These third-parties are the only entities that can effectively disable Defendants' IP addresses and domains, and their cooperation is necessary. The Proposed Order also directs the third-parties to take certain actions to ensure that the requested relief is not rendered fruitless, namely: providing reasonable access to their facilities so that the order can be executed; not publishing notice of the Court's Order until it is fully executed; and preserving and producing documents through which Defendants may be identified.

Finally, requiring the third-party data centers and domain registries to reasonably assist in the execution of this order will not offend due process. In *In re Application of* *United States for an Order*, the Ninth Circuit Court of Appeals raised, in dicta, the possibility

1 that directing a non-party to assist in the execution of an order without prior notice or a  
 2 hearing may violate due process. 616 F.2d 1122 at 1132-33. But prior notice and a prior  
 3 hearing are not always required to satisfy due process. *See e.g. Mathews v. Eldridge*, 424  
 4 U.S. 319 (1976) (evidentiary hearing held after withholding of social security benefits  
 5 satisfied due process); *Goichman v. Rheuban Motors, Inc.* 682 F.2d 1320 (9th Cir. 1982)  
 6 (hearing held shortly after car was towed satisfied due process). Determining what  
 7 procedures are necessary to satisfy due process requires a flexible inquiry into, *inter alia*, the  
 8 nature of the existing procedures, the risk of erroneous deprivation, and the interests  
 9 involved. *Mathews*, 424 U.S. at 334-335. Here, requiring the third-parties to provide  
 10 minimal assistance in executing the order would not violate due process. The third-parties  
 11 are not being deprived of any tangible or significant property interest. The Proposed Order  
 12 requires only minimal assistance from the third-parties (likely on the order of hours), and  
 13 requires Microsoft to compensate the third-parties for the assistance rendered. Further, the  
 14 Proposed Order requires that it be implemented with the least degree of interference with the  
 15 normal operation of the third-parties. If, in the implementation of the Proposed Order, any  
 16 third-party wishes to bring an issue to the attention of the Court, Microsoft will bring it  
 17 immediately. Regardless, the third-parties will have an opportunity to be heard at the  
 18 preliminary injunction hearing, which must occur shortly after the execution of the Proposed  
 19 Order. Fed. R. Civ. P. 65(b)(2).

20 The directions to third-parties in the Proposed Order are thus narrow, satisfy due  
 21 process, and are necessary to effect the requested relief and ensure that the relief is not  
 22 rendered fruitless.<sup>1</sup>

23 **III. CONCLUSION**

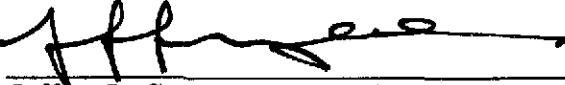
24 For the reasons set forth in its application for TRO and on the bases set forth herein,  
 25 Microsoft respectfully requests that the Court enter the Proposed Order attached as

26  
 27 <sup>1</sup> The United States Marshals have reviewed the principal provisions of the Proposed Order have not expressed  
 28 concerns with them.

1 Exhibit A.

2 Dated: March 1, 2011.

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23 Attorneys for Plaintiff Microsoft Corp.

# Exhibit A

### **The Honorable James L. Robart**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## MICROSOFT CORPORATION

**Plaintiff,**

v.

JOHN DOES 1-11 CONTROLLING A COMPUTER BOTNET THEREBY INJURING MICROSOFT AND ITS CUSTOMERS.

**Defendants.**

Case No. 2:11-cv-00222

**SECOND AMENDED [PROPOSED]  
*EX PARTE* TEMPORARY  
RESTRAINING ORDER, SEIZURE  
ORDER AND ORDER TO SHOW  
CAUSE RE PRELIMINARY  
INJUNCTION**

\*\*FILED UNDER SEAL\*\*

Plaintiff Microsoft Corporation (“Microsoft”) has filed a complaint for injunctive and other relief pursuant to: (1) the Computer Fraud and Abuse Act (18 U.S.C. § 1030); (2) the CAN-SPAM Act (15 U.S.C. § 7704); (3) the Lanham Act (15 U.S.C. §§ 1114(a)(1), 1125(a), (c)); and (4) the common law of trespass, conversion and unjust enrichment. Microsoft has moved *ex parte* for an emergency temporary restraining order and seizure order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, 15 U.S.C § 1116(d) (the Lanham Act) and 28 U.S.C. § 1651(a) (the All Writs Act), and an order to show cause why a preliminary injunction should not be granted.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the papers, declarations, exhibits, and memorandum filed in support of Microsoft's Application for *Ex Parte* Temporary Restraining Order, *Ex Parte* Seizure and Order

1 to Show Cause Re Preliminary Injunction (“TRO Application”), the Court hereby makes the  
 2 following findings of fact and conclusions of law:

3       1. This Court has jurisdiction over the subject matter of this case and there is good  
 4 cause to believe that it will have jurisdiction over all parties hereto; the Complaint states a claim  
 5 upon which relief may be granted against the Defendants under the Computer Fraud and Abuse  
 6 Act (18 U.S.C. § 1030); CAN-SPAM Act (15 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§  
 7 1114, 1125); and the common law of trespass to chattels, conversion and unjust enrichment.

8       2. Microsoft owns the registered trademarks “Microsoft,” “Windows,” and “Hotmail”  
 9 used in connection with its services, software, and products.

10      3. There is good cause to believe that Defendants have engaged in and are likely to  
 11 engage in acts or practices that violate the Computer Fraud and Abuse Act (18 U.S.C. § 1030);  
 12 CAN-SPAM Act (15 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§ 1114, 1125); and the  
 13 common law of trespass to chattels, conversion and unjust enrichment, and that Microsoft is,  
 14 therefore, likely to prevail on the merits of this action.

15      4. There is good cause to believe that, unless the Defendants are restrained and  
 16 enjoined by Order of this Court, immediate and irreparable harm will result from the Defendants’  
 17 ongoing violations of the Computer Fraud and Abuse Act (18 U.S.C. § 1030); CAN-SPAM Act  
 18 (15 U.S.C. § 7704); the Lanham Act (15 U.S.C. §§ 1114, 1125); and the common law of trespass  
 19 to chattels, conversion and unjust enrichment. The evidence set forth in Microsoft’s Application  
 20 for an Emergency Temporary Restraining Order, Seizure Order and Order to Show Cause Re  
 21 Preliminary Injunction (“TRO Motion”), and the accompanying declarations and exhibits,  
 22 demonstrates that Microsoft is likely to prevail on its claim that Defendants have engaged in  
 23 violations of the foregoing laws by: (1) intentionally accessing and sending malicious software to  
 24 Microsoft’s and its customers’ protected computers and operating systems, without authorization,  
 25 in order to infect those computers and make them part of the botnet; (2) sending malicious  
 26 software to configure, deploy and operate a botnet; (3) sending unsolicited spam e-mail to  
 27 Microsoft’s Hotmail accounts; and (4) sending unsolicited spam e-mails that falsely indicate that  
 28 they are from or approved by Microsoft and that promote counterfeit pharmaceuticals and other

1 fraudulent schemes. There is good cause to believe that if such conduct continues, irreparable  
 2 harm will occur to Microsoft and the public, including Microsoft's customers. There is good  
 3 cause to believe that the Defendants will continue to engage in such unlawful actions if not  
 4 immediately restrained from doing so by Order of this Court.

5. There is good cause to believe that immediate and irreparable damage to this  
 6 Court's ability to grant effective final relief will result from the sale, transfer, or other disposition  
 7 or concealment by Defendants of the botnet command and control software that is hosted at and  
 8 otherwise operates through the Internet Protocol (IP) addresses listed in Appendix A and the  
 9 Internet domains at issue in Microsoft's TRO Application and from the destruction or  
 10 concealment of other discoverable evidence of Defendants' misconduct available at those  
 11 locations if the Defendants receive advance notice of this action. Based on the evidence cited in  
 12 Microsoft's TRO Application and accompanying declarations and exhibits, Microsoft is likely to  
 13 be able to prove that: (1) the Defendants are engaged in activities that directly violate U.S. law  
 14 and harm Microsoft and the public, including Microsoft's customers; (2) the Defendants have  
 15 continued their unlawful conduct despite the clear injury to the foregoing interests; (3) the  
 16 Defendants are likely to delete or relocate the botnet command and control software at issue in  
 17 Microsoft's TRO Application and the harmful, malicious, and trademark infringing software  
 18 disseminated through these IP addresses and domains and to warn their associates engaged in such  
 19 activities if informed of Microsoft's action. Microsoft's request for this emergency *ex parte* relief  
 20 is not the result of any lack of diligence on Microsoft's part, but instead is based upon the nature  
 21 of Defendants' unlawful conduct. Therefore, in accordance with Fed. R. Civ. P. 65(b) and 15  
 22 U.S.C. § 1116(d), good cause and the interests of justice require that this Order be Granted  
 23 without prior notice to the Defendants, and accordingly Microsoft is relieved of the duty to  
 24 provide the Defendants with prior notice of Microsoft's motion.

6. There is good cause to believe that the Defendants have engaged in illegal activity  
 using the data centers and/or Internet hosting providers identified in Appendix A to host the  
 command and control software and the malicious botnet code and content used to maintain and  
 operate the botnet at computers, servers, electronic data storage devices or media at the IP

1 addresses identified in Appendix A.

2       7. There is good cause to believe that to immediately halt the injury caused by  
 3 Defendants, Defendants' IP addresses identified in Appendix A must be immediately disabled;  
 4 Defendants' computing resources related to such IP addresses must be disconnected from the  
 5 Internet; Defendants must be prohibited from accessing Defendants' computer resources related  
 6 to such IP addresses; and to prevent the destruction of data and evidence located on those  
 7 computer resources.

8       8. There is good cause to believe that to immediately halt the injury caused by  
 9 Defendants, and to ensure that future prosecution of this case is not rendered fruitless by attempts  
 10 to delete, hide, conceal, or otherwise render inaccessible the software components that distribute  
 11 unlicensed copies of Microsoft's registered trademarks and carry out other harmful conduct, with  
 12 respect to Defendants' most current, active command and control IP addresses hosted at data  
 13 centers operated by ECommerce, Inc.; FDCservers.net, LLC; Wholesale Internet, Inc.; Burstnet  
 14 Technologies, Inc. d/b/a Network Operations Center, Inc.; and Softlayer Technologies, Inc., the  
 15 United States Marshals Service in the judicial districts where the data centers are located should  
 16 be directed to seize, impound and deliver into the custody of third-party escrow service Stroz  
 17 Friedberg, 1925 Century Park East, Suite 1350, Los Angeles, CA 90067, all of Defendants'  
 18 computers, servers, electronic data storage devices, software, data or media associated with the IP  
 19 addresses listed in Appendix A.

20       9. There is good cause to believe that the Defendants have engaged in illegal activity  
 21 using the Internet domains identified at Appendix B to this order to host the command and control  
 22 software and content used to maintain and operate the botnet. There is good cause to believe that  
 23 to immediately halt the injury caused by Defendants, each of Defendants' current and prospective  
 24 domains set forth in Appendix B must be immediately made inaccessible, and/or removed from  
 25 the Internet zone file.

26       10. There is good cause to direct that third party data centers, hosting providers and  
 27 Internet registries/registrar reasonably assist in the implementation of the Order and refrain from  
 28 frustrating the implementation and purposes of this Order, pursuant to 28 U.S.C. § 1651(a) (the

1 All Writs Act).

2 11. There is good cause to believe that if Defendants are provided advance notice of  
 3 Microsoft's TRO Application or this Order, they would move the botnet infrastructure, allowing  
 4 them to continue their misconduct and would destroy, move, hide, conceal, or otherwise make  
 5 inaccessible to the Court evidence of their misconduct, the botnet's activity, the infringing  
 6 materials, the instrumentalities used to make the infringing materials, and the records evidencing  
 7 the manufacture and distributing of the infringing materials.

8 12. There is good cause to permit notice of the instant order, notice of the Preliminary  
 9 Injunction hearing and service of the Complaint by formal and alternative means, given the  
 10 exigency of the circumstances and the need for prompt relief. The following means of service are  
 11 authorized by law, satisfy Due Process, satisfy Fed. R. Civ. Pro. 4(f)(3), and are reasonably  
 12 calculated to notify defendants of the instant order, the Preliminary Injunction hearing and of this  
 13 action: (1) personal delivery upon defendants who provided to the data centers and Internet  
 14 hosting providers contact information in the U.S.; (2) personal delivery through the Hague  
 15 Convention on Service Abroad or other treaties upon defendants who provided contact  
 16 information outside the United States; (3) transmission by e-mail, facsimile, and mail to the  
 17 contact information provided by defendants to the data centers, Internet hosting providers, and  
 18 domain registrars who host the software code associated with the IP addresses in Appendix A, or  
 19 through which domains in Appendix B are registered; and (4) publishing notice to the Defendants  
 20 on a publicly available Internet website.

21 13. There is good cause to believe that the harm to Microsoft of denying the relief  
 22 requested in its TRO Application outweighs any harm to any legitimate interests of Defendants  
 23 and that there is no undue burden to any third party.

24 **TEMPORARY RESTRAINING ORDER AND SEIZURE ORDER**

25 **IT IS THEREFORE ORDERED** as follows:

26 A. Defendants, their representatives and persons who are in active concert or  
 27 participation with them are temporarily restrained and enjoined from intentionally accessing and  
 28 sending malicious software to Microsoft's and its customers' protected computers and operating

1 systems, without authorization, in order to infect those computers and make them part of the  
 2 botnet; sending malicious software to configure, deploy and operate a botnet; sending unsolicited  
 3 spam e-mail to Microsoft's Hotmail accounts; and sending unsolicited spam e-mail that falsely  
 4 indicate that they are from or approved by Microsoft; or undertaking any similar activity that  
 5 inflicts harm on Microsoft or the public, including Microsoft's customers.

6       B. Defendants, their representatives and persons who are in active concert or  
 7 participation with them are temporarily restrained and enjoined from configuring, deploying,  
 8 operating or otherwise participating in or facilitating the botnet described in the TRO Application,  
 9 including but not limited to the command and control software hosted at and operating through the  
 10 IP addresses and domains set forth herein and through any other component or element of the  
 11 botnet in any location.

12       C. Defendants, their representatives and persons who are in active concert or  
 13 participation with them are temporarily restrained and enjoined from using the trademarks  
 14 "Microsoft," "Windows," "Hotmail," and/or other trademarks; trade names; service marks; or  
 15 Internet Domain addresses or names; or acting in any other manner which suggests in any way  
 16 that Defendants' products or services come from or are somehow sponsored or affiliated with  
 17 Microsoft, and from otherwise unfairly competing with Microsoft, misappropriating that which  
 18 rightfully belongs to Microsoft, or passing off their goods as Microsoft's.

19       D. Defendants, their representatives and persons who are in active concert or  
 20 participation with them are temporarily restrained and enjoined from infringing Microsoft's  
 21 registered trademarks, Registration Nos. 1200236, 2165601, 2463510 and others.

22       E. Defendants, their representatives and persons who are in active concert or  
 23 participation with them are temporarily restrained and enjoined from using in connection with  
 24 Defendants' activities any false or deceptive designation, representation or description of  
 25 Defendants' or of their representatives' activities, whether by symbols, words, designs or  
 26 statements, which would damage or injure Microsoft or give Defendants an unfair competitive  
 27 advantage or result in deception of consumers.

28       F. Defendants' materials bearing infringing marks, the means of making the

1 counterfeit marks, and records documenting the manufacture, sale, or receipt of things involved in  
 2 such violation, in the possession of data centers operated by ECommerce, Inc., FDCServers.net  
 3 LLC, Wholesale Internet, Inc., Burstnet Technologies, Inc., and Softlayer Technologies, Inc., all  
 4 pursuant to 15 U.S.C. §1116(d), shall be seized:

5       1.       The seizure at the foregoing data centers and hosting providers shall take  
 6 place no later than seven (7) days after the date of issue of this order. The seizure may continue  
 7 from day to day, for a period not to exceed three (3) days, until all items have been seized. The  
 8 seizure shall be made by the United States Marshals Service. The United States Marshals Service  
 9 in the judicial districts where the foregoing data centers and hosting providers are located are  
 10 directed to coordinate with each other and with Microsoft and its attorneys in order to carry out  
 11 this Order such that disablement and seizure of the servers is effected simultaneously, to ensure  
 12 that Defendants are unable to operate the botnet during the pendency of this case. In order to  
 13 facilitate such coordination, the United States Marshals in the relevant jurisdictions are set forth,  
 14 as follows:

15

- 16       a.       Northern District of Illinois  
                  U.S. Marshal: Darryl K. McPherson  
                  219 S. Dearborn Street, Room 2444  
                  Chicago, IL 60604  
                  (312) 353-5290
- 17       b.       District of Colorado  
                  U.S. Marshal: John Kammerzell  
                  U.S. Courthouse  
                  901 19th St., 3rd Floor  
                  Denver, Co 80294  
                  (303) 335-3400
- 18       c.       Middle District of Pennsylvania  
                  U.S. Marshal: Martin J. Pane (Acting)  
                  Federal Building  
                  Washington Avenue & Linden Street, Room 231  
                  Scranton, PA 18501  
                  (570) 346-7277
- 19       d.       Western District of Missouri  
                  U.S. Marshal: C. Mauri Sheer  
                  U.S. Courthouse  
                  400 E. 9th St., Room 3740  
                  Kansas City, MO 64106  
                  (816) 512-2000

- e. Eastern District of Virginia  
U.S. Marshal: John R. Hackman  
401 Courthouse Square  
Alexandria, VA 22314  
(703) 837-5500
- f. Northern District of Texas  
U.S. Marshal: Randy Paul Ely  
Federal Building  
1100 Commerce Street, Room 16F47  
Dallas, TX 75242  
(214) 767-0836
- g. Western District of Washington  
U.S. Marshal: Mark L. Ericks  
700 Stewart Street, Suite 9000  
Seattle, WA 98101-1271  
(206) 370-8600
- h. Southern District of Ohio  
U.S. Marshal: Cathy Jones  
U.S. Courthouse  
85 Marconi Boulevard, Room 460  
Columbus, OH 43215  
(614) 469-5540

2. The United States Marshals and their deputies shall be accompanied by

Microsoft's attorneys and forensic experts at the foregoing described seizure, to assist with identifying, inventorying, taking possession of and isolating Defendants' computer resources, command and control software and other software components that are seized. The United States Marshals shall seize Defendants' computers, servers, electronic data storage devices or media associated with Defendants' IP addresses at the hosting companies set forth in Paragraph F above, or a live image of Defendants' data and information on said computers, servers, electronic data storage devices or media, as reasonably determined by the U.S. Marshals Service, Microsoft's forensic experts and/or attorneys.

3. Stroz Friedberg, 1925 Century Park East, Suite 1350, Los Angeles, CA 90067, tel. (310) 623-3301, will act as substitute custodian of any and all properties seized pursuant to this Order and shall hold harmless the United States Marshals Service, arising from any acts, incidents, or occurrences in connection with the seizure and possession of the defendants' property, including any third-party claims, and the United States Marshal shall be

1 discharged of his or her duties and responsibilities for safekeeping of the seized materials.

2           4. The United States Marshals accomplishing such seizure are permitted to  
 3 enter the premises of the data centers operated by ECommerce, Inc., FDCServers.net LLC,  
 4 Wholesale Internet, Inc., Burstnet Technologies, Inc., and Softlayer Technologies, Inc., in order to  
 5 serve copies of this Order, carry out the terms of this Order and to verify compliance with this  
 6 Order. The United States Marshals shall employ whatever reasonable means are necessary to  
 7 carry out the terms of this Order and to inspect the contents of any computers, servers, electronic  
 8 data storage devices, media, room, closets, cabinets, vehicles, containers or desks or documents  
 9 and to dismantle any equipment utilized by Defendants to carry out the activities prohibited by  
 10 this Order.

11           G. Pursuant to the All Writs Act and to effect discovery of the true identities of the  
 12 John Doe defendants, the data centers and hosting providers identified in Appendix A and the  
 13 domain registries identified in Appendix B to this Order, shall:

14           1. disable Defendants' IP addresses set forth in Appendix A (including  
 15 through any backup systems) so that they can no longer be accessed over the Internet, connected  
 16 to, or communicated with in any way except as explicitly provided for in this order;

17           2. disable Defendants' domains set forth in Appendix B so that they can no  
 18 longer be accessed over the Internet, connected to, or communicated with in any way except as  
 19 explicitly provided for in this order by (1) locking the domains and removing such domains from  
 20 the zone file and (2) taking all steps required to propagate the foregoing domain registry changes  
 21 to domain name registrars;

22           3. transfer any content and software hosted on Defendants' IP addresses listed  
 23 in Appendix A to new IP addresses not listed in Appendix A; notify Defendants and any other  
 24 owners of such content or software of the new IP addresses, and direct them to contact  
 25 Microsoft's Counsel, Gabriel M. Ramsey, Orrick Herrington & Sutcliffe, 1000 Marsh Road,  
 26 Menlo Park, CA 90425-1015, (Tel: 650-614-7400), to facilitate any follow-on action;

27           4. preserve and produce to Microsoft documents and information sufficient to  
 28 identify and contact Defendants and Defendants' representatives operating or controlling the IP

1 addresses set forth in Appendix A, including any and all individual or entity names, mailing  
 2 addresses, e-mail addresses, facsimile numbers and telephone numbers or similar contact  
 3 information, including but not limited to such contact information reflected in billing, usage and  
 4 contact records;

5. provide reasonable assistance in implementing the terms of this Order and  
 6 shall take no action to frustrate the implementation of this Order, including the provision of  
 7 sufficient and reasonable access to offices, facilities, computer networks, computers and services,  
 8 so that the United States Marshals Service, Microsoft, its attorneys and/or representatives may  
 9 directly supervise and confirm the implementation of this Order against Defendants;

10. refrain from publishing or providing notice or warning of this Order to  
 11 Defendants, their representatives or persons who are in active concert or participation with them,  
 12 until this Order is fully executed, except as explicitly provided for in this Order.

13. H. Anyone interfering with the execution of this Order is subject to arrest by federal or  
 14 state law enforcement officials.

15. **IT IS FURTHER ORDERED** that copies of this Order, notice of the Preliminary  
 16 Injunction hearing and service of the Complaint may be served by any means authorized by law,  
 17 including (1) by personal delivery upon defendants who provided contact information in the U.S.;  
 18 (2) personal delivery through the Hague Convention on Service Abroad upon defendants who  
 19 provided contact information outside the U.S.; (3) by transmission by e-mail, facsimile and mail  
 20 to the contact information provided by defendants to the data centers, Internet hosting providers  
 21 and domain registrars who hosted the software code associated with the IP addresses set forth at  
 22 Appendix A or through which domains in Appendix B are registered; and (4) by publishing notice  
 23 to Defendants on a publicly available Internet website.

24. **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b), 15  
 25 U.S.C. §1116(d)(10) and 28 U.S.C. § 1651(a) (the All Writs Act) that the Defendants shall appear  
 26 before this Court within 28 days from the date of this order, to show cause, if there is any, why  
 27 this Court should not enter a Preliminary Injunction, pending final ruling on the Complaint against  
 28 the Defendants, enjoining them from the conduct temporarily restrained by the preceding

1 provisions of this Order.

2 **IT IS FURTHER ORDERED** that Microsoft shall post bond in the amount of \$173,000  
3 as cash to be paid into the Court registry.

4 **IT IS FURTHER ORDERED** that Microsoft shall compensate the data centers, Internet  
5 hosting providers and/or domain registries identified in Appendices A and B at prevailing rates for  
6 technical assistance rendered in implementing the Order.

7 **IT IS FURTHER ORDERED** that this Order shall be implemented with the least degree  
8 of interference with the normal operation of the data centers and internet hosting providers and/or  
9 domain registries identified in Appendices A and B consistent with thorough and prompt  
10 implementation of this Order.

11 **IT IS FURTHER ORDERED** that the Defendants shall file with the Court and serve on  
12 Microsoft's counsel any answering affidavits, pleadings, motions, expert reports or declarations  
13 and/or legal memoranda no later than four (4) days prior to the hearing on Microsoft's request for  
14 a preliminary injunction. Microsoft may file responsive or supplemental pleadings, materials,  
15 affidavits, or memoranda with the Court and serve the same on counsel for the Defendants no later  
16 than one (1) day prior to the preliminary injunction hearing in this matter. Provided that service  
17 shall be performed by personal or overnight delivery, facsimile or electronic mail, and documents  
18 shall be delivered so that they shall be received by the other parties no later than 4:00 p.m. (Pacific  
19 Standard Time) on the appropriate dates listed in this paragraph.

20 **IT IS SO ORDERED**

21  
22 Entered this \_\_\_\_ day of March, 2011.

23 \_\_\_\_\_  
24 The Honorable James L. Robart  
25 United States District Judge  
26  
27  
28